

# CHAPTER 5

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## Section 4(f)





## 5 SECTION 4(f)

### 5.1 Introduction

This chapter provides a summary of the evaluation of effects on resources protected under a U.S. Department of Transportation (USDOT) statute known as Section 4(f). It also discusses a federal regulation known as Section 6(f) that applies to park and recreation resources that have been acquired or developed with certain federal funds. *Appendix I* contains the full Section 4(f) evaluation for the project.

### 5.2 Section 4(f) Guidelines and Regulations

The U.S. Department of Transportation Act of 1966, Section 4(f), generally prohibits USDOT agencies (including the FTA) from approving projects that would use land from:

...a significant publicly-owned park, recreation area or wildlife and waterfowl refuge or any significant historic site, unless there is no feasible and prudent alternative to the use of land from the property and the action includes all possible planning to minimize harm to the property resulting from the use.

Section 4(f) applies to three types of resources:

- Significant publicly owned parks, and significant recreation areas that are open to the public.
- Significant publicly owned wildlife and waterfowl refuges, whether or not they are open to the public.
- Historic sites of national, state, or local significance, whether or not these sites are publicly owned or open to the public. In most cases, only historic properties listed in or eligible for inclusion in the National Register of Historic Places (NRHP) are protected under Section 4(f).

A *use* is generally defined as a transportation activity that acquires land from a Section 4(f) property. A use can be permanent, temporary, or constructive. A constructive use occurs when the proximity effects of the project are so great that they substantially impair the protected activities, features, or attributes of a property, even though the project does not physically use the property.

Section 4(f) properties may not be used for any transportation project receiving federal funds or approval from a USDOT agency, except where: (a) *de minimis* impact occurs (described below); (b) there is a specific exception to a use in the Section 4(f) regulations; or (c) there is no feasible or prudent alternative and all possible planning has been done to minimize harm. Section 4(f) also requires that an action include all possible planning to minimize harm to properties covered by the Act.

The Section 4(f) analysis has a study area that combines the study areas from two other analyses completed for the project EIS. For potential uses of historic, cultural, and archaeological resources, the analysis used the Area of Potential Effects (APE) described in *Section 4.6 Cultural Resources*. For potential uses of parks and recreational resources, the analysis considered all such resources within 0.5 mile of the project

footprint based on the study area used for *Section 4.5 Social Environment and Environmental Justice*. Figure 5-1 shows these study areas.

### 5.3 Section 6(f) Resources

State and local governments often obtain grants through the Land and Water Conservation Fund Act to acquire or make improvements to parks and recreation areas. Section 6(f) of this Act prohibits the conversion of property acquired or developed with these funds to a non-recreational purpose, without the approval of the U.S. Department of the Interior's National Park Service. Because Section 4(f) lands may have been developed with Section 6(f) funds, a Section 6(f) analysis was also conducted for this project. It confirmed that no potentially affected property was acquired or developed with these funds.

### 5.4 Section 4(f) Resources

Section 4(f) resources in the study area are shown on Figure 5-1.

#### Parks and Recreation Resources

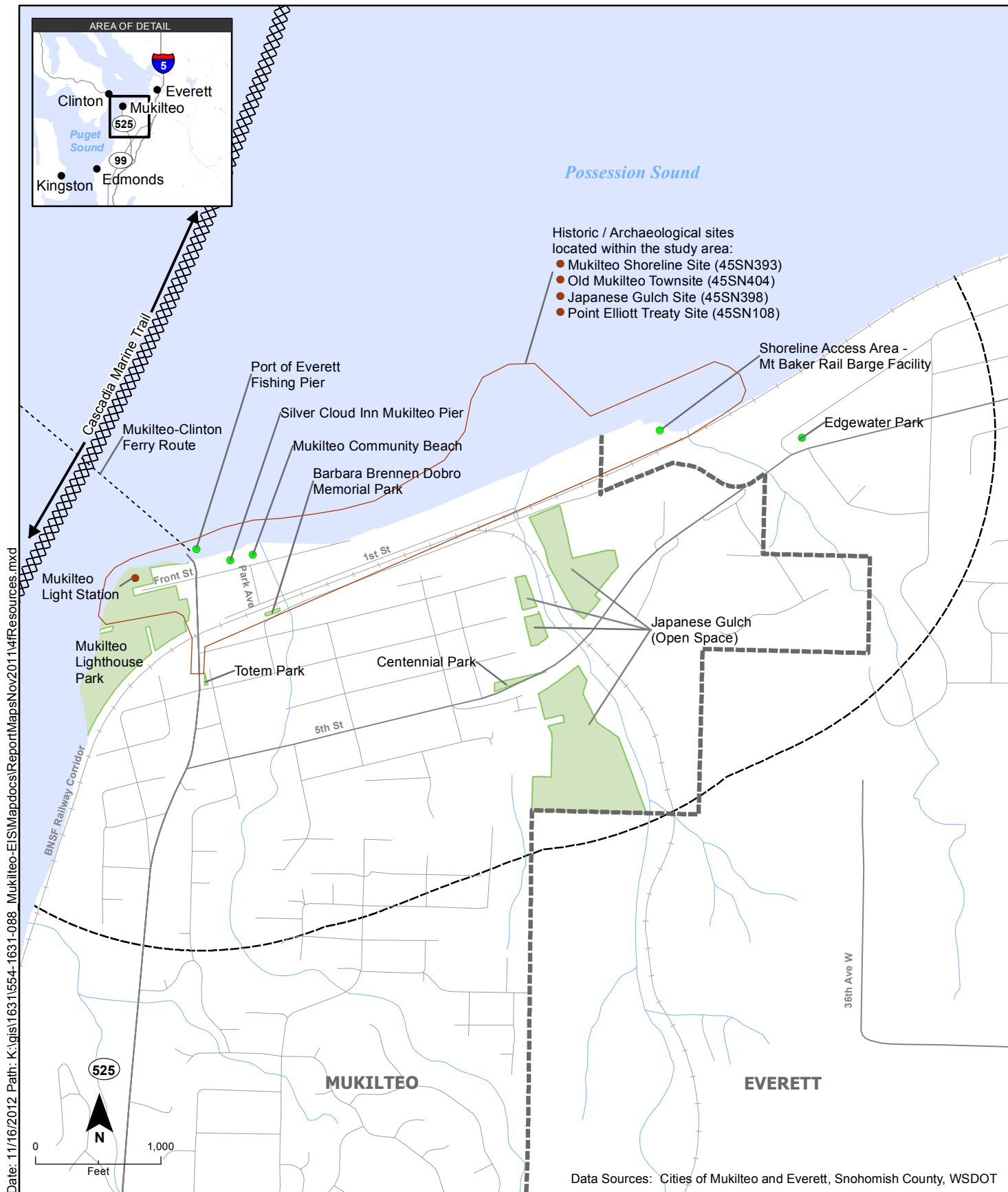
The project alternatives are near a number of parks and recreational areas. Figure 5-1 shows the locations of the parks and recreational areas within the study area; these facilities are listed in Table 5-1 and described below.

**Table 5-1. Parks and Recreational Section 4(f) Resources**

Park Resource	Owner/ Custodian	Recreational Use
Cascadia Marine Trail	U.S. waters	Recreation
Mukilteo Lighthouse Park	City of Mukilteo	Active and passive recreation
Port of Everett Fishing Pier and Seasonal Day Moorage	Port of Everett	Active recreation
Silver Cloud Inn Pier	City of Mukilteo	Active recreation
Mukilteo Community Beach	City of Mukilteo	Shoreline access
Totem Park	City of Mukilteo	Passive recreation
Barbara Brennen Dobro Memorial Park	City of Mukilteo	Passive recreation
Centennial Park	City of Mukilteo	Passive recreation
Edgewater Park	City of Everett	Active and passive recreation
Port of Everett Mount Baker Terminal Shoreline Access Area	Port of Everett	Shoreline access (not currently open)
Japanese Gulch	City of Mukilteo	Passive recreation

The Cascadia Marine Trail is one of 16 non-motorized water trails designated as National Millennium Trails by the White House Millennium Council. It extends through Puget Sound from Olympia to Point Roberts on the U.S.-Canada border.

Mukilteo Lighthouse Park, a 14.4-acre park located west of the current terminal, includes the former Mukilteo State Park property, the former U.S. Coast Guard Light Station property, and adjacent Front Street right-of-way.



- Historic Resources
- Park and Recreational Resources
- 1/2 Mile Study Area
- Section 106 Area of Potential Effects
- City Boundary

**Figure 5-1. Section 4(f) Resources**

The Port of Everett has a fishing pier and seasonal day moorage located on the east side of the existing Mukilteo ferry terminal dock. The pier is documented in the City of Mukilteo's Public, Private Open Spaces and Recreational Facilities Map. The pier is open year-round to the public, and offers seasonal day moorage slips for boaters.

Adjacent to the Silver Cloud Inn is a public shoreline promenade that includes a pier. This pier supports recreational activities, such as view enjoyment and fishing.

Mukilteo Community Beach provides limited access to the shoreline at the terminus to Park Avenue. SCUBA divers use Mukilteo Community Beach as a launching site.

The Port of Everett Mount Baker Terminal shoreline access area partially overlaps with an area locally referred to as Edgewater Beach. The area is not yet officially open, but it includes parking and a shoreline walkway and access area. As land dedicated to be a public recreational facility, it is a Section 4(f) resource.

Japanese Gulch is a designated open space owned by the City of Mukilteo. It offers informal trails and open space areas around Japanese Creek, adjacent to Mukilteo Lane and 5th Street.

The other four resources are small parks located farther from the project area. Totem Park, at the intersection of SR 525 and Third Street, occupies approximately 0.10 acre, and features a picnic area, public views of Puget Sound, and public art. Barbara Brennen Dobro Memorial Park is a small open-space area featuring unobstructed views of Puget Sound. Centennial Park, located at 1126 5th Street, occupies approximately 0.25 acre and has picnic tables, public art, and a parking area. Edgewater Park, located in Everett, is in the southeast part of the study area, and includes picnic tables, tennis and basketball courts, and a playground.

## Historic Resources

Table 5-2 identifies the properties within the project's APE that are listed or eligible for listing in the NRHP; these historic properties are Section 4(f) resources.

**Table 5-2. Historic and Cultural Section 4(f) Resources**

Resource	Location	NRHP-Eligible?
Mukilteo Shoreline Site (45SN393)	Mukilteo Tank Farm Elliot Point	Yes
Point Elliott Treaty Site (45SN108)	Central Waterfront	Yes
Old Mukilteo Townsite (45SN404)	Park Avenue/ Front Street	Yes
Japanese Gulch Site (45SN398)	Japanese Creek/ Mukilteo Tank Farm	Yes
Mukilteo Light Station (45SN123)	Elliot Point	Yes (listed)

The five properties that are Section 4(f) resources are briefly described below. Additional detail on these properties is provided in *Section 4.6 Cultural Resources* and in *Appendix I Section 4(f) Evaluation*.

***Mukilteo Shoreline Site***

The Mukilteo Shoreline Site (designated 45SN393 by DAHP) is a shell midden related to native inhabitants of the Puget Sound region, holding artifacts dating back more than a thousand years.

***Point Elliott Treaty Site***

The Point Elliott Treaty Site (designated 45SN108 by DAHP) is significant for its association with the treaty signers, the history of Indian-White relations, and the development of federal Indian policy in the last half of the 19th century, both nationally and regionally. The treaty, one of five treaties negotiated between 1854 and 1856, represented a major change in relations with the Indian nations in the northwestern United States. The site is also archaeologically significant under NRHP Criterion D because artifacts from the treaty period may be present.

***Old Mukilteo Townsite***

The Old Mukilteo Townsite (designated 45SN404 by DAHP) consists of historic remains from Mukilteo's business district dating from at least 1880 to 1938.

***Japanese Gulch Site***

The project has identified historic archaeological resources at Japanese Gulch (designated 45SN398 by DAHP), which contains two areas where an early 20th century Mukilteo Japanese community was located.

***Mukilteo Light Station***

The Mukilteo Light Station (designated 45SN123 by DAHP), a lighthouse complex consisting of 11 buildings and structures, is listed in the NRHP. It is a well-preserved complex of buildings and structures typical of those produced by the federal Light House Board in the Pacific Northwest during the late 19th and early 20th centuries. The Mukilteo Light Station is also historically significant for its association with the maritime history of Puget Sound.

**5.5 Evaluation of Section 4(f) Resource Use****5.5.1 Summary of Effects on Section 4(f) Properties**

Tables 5-3 and 5-4 summarize the impacts of the Preferred Alternative on Section 4(f) properties, and provide FTA's use determinations for the Preferred Alternative. Table 5-3 discusses parks and recreation resources, and Table 5-4 addresses historic resources.

**Table 5-3. Summary of the Preferred Alternative's Effects on Section 4(f) Parks and Recreation Resources**

Name	Owner/ Custodian	Description of Project Activity	Use Determination
Port of Everett Fishing Pier and Day Moorage	Port of Everett	The demolition of the existing ferry terminal would require closing and reconstructing the fishing pier.	Use
Mount Baker Terminal Shoreline Access Area	Port of Everett	No impact	No use

**Table 5-4. Summary of the Preferred Alternative's Effects on Section 4(f) Historic and Cultural Resources**

Name	Description of Project Activity	Use Determination
Mukilteo Shoreline Site (45SN393)	Although the design avoids construction within the known limits of the midden, a potential for impact still exists.	Use
Point Elliott Treaty Site (45SN108)	The alternative would occupy an area within the site boundaries. It would remove existing ferry facilities not related to the site's historic characteristics, and develop other portions of the site where there are no visible features related to its historic significance.	Use
Old Mukilteo Townsite (45SN404)	Adverse effect due to excavation within site.	Use
Japanese Gulch Site (45SN398)	No effect	No use

### 5.5.2 Comparison of the Ability of Alternatives to Avoid or Minimize Uses of Section 4(f) Resources

As shown in Table 5-5, all of the project Build alternatives would use the same Section 4(f) resources, and none of the alternatives would completely avoid a Section 4(f) use.

**Table 5-5. Comparison of Section 4(f) Uses for all Build Alternatives**

	Preferred Alternative	Existing Site Improvements	Elliot Point 1
<b>Section 4(f) Resource Affected</b>			
Port of Everett Fishing Pier and Day Moorage	Use	Use	Use
Mount Baker Terminal Shoreline Access Area	No use	No use	<i>De minimis</i>
Mukilteo Shoreline Site (45SN393)	Use	Use	Use
Point Elliott Treaty Site (45SN108)	Use	Use	Use
Old Mukilteo Townsite (45SN404)	Use	Use	Use
Japanese Gulch Site (45SN398)	No use	No use	Use
<b>Total Section 4(f) Resources with a Use or Potential Use</b>	4	4	5

### 5.5.3 Absence of Prudent and Feasible Avoidance Alternatives

Because none of the project's proposed alternatives completely avoids using Section 4(f) resources, Section 4(f) regulations require an analysis to determine if there are prudent and feasible avoidance alternatives.

The Preferred Alternative would use four resources that also would be used by the other Build alternatives. Any other alternative within the Mukilteo waterfront area would have a similar likelihood of using these resources, even if some design elements were modified or the alternatives had different footprints. Alternatives outside of Mukilteo that would have avoided these resources were considered but eliminated because they did not meet the project's purpose and need and worsened environmental effects (see *Chapter 2 Alternatives* for more information). The No-Build Alternative would not avoid the use of at least one Section 4(f) resource, and as it also does not satisfy the purpose and need, it does not qualify as a prudent and feasible alternative to a use. Therefore, none of the alternatives considered would constitute a feasible and prudent Section 4(f) avoidance alternative.

### 5.5.4 Determining "Least Harm" Alternatives

Because no alternative completely avoids Section 4(f) uses, FTA can identify one or more "least harm" alternatives, considering factors defined in Section 4(f) regulations. *Appendix I* lists the factors to be considered; they include the remaining impacts to the Section 4(f) resources after mitigation, the degree to which each alternative meets the project's purpose and need, and any adverse impacts after mitigation to resources not protected by Section 4(f) resources.

FTA has incorporated in its analysis the results of the environmental analysis, public comments on the Draft EIS, the information gathered through continuing Section 4(f) evaluation and coordination, and Section 106 consultations with other agencies, tribes, and interested parties. *Appendix I* describes in more detail each of the alternatives' performance with respect to all of the least harm factors. The text below focuses on the primary conclusions of this complex analysis:

- The Preferred Alternative is most able to mitigate adverse impacts on the affected Section 4(f) properties. It includes measures that protect the affected historic properties, and replace the affected recreation property. Its mitigation measures reduce the remaining harm, after mitigation, to the properties, and offers design opportunities that recognize the historic significance of several of the properties. The mitigation measures are supported by the other agencies with jurisdiction over each of the properties.
- The Preferred Alternative best meets the project's purpose and need because it offers the most improvements to transportation conditions for pedestrians, bicyclists, transit riders, and vehicles; it has the shortest distances between the transit center, terminal, and the commuter rail station; and it performs at least as well as the other alternatives in all the other purpose and need areas.
- The Preferred Alternative has similar or lower environmental impacts and offers the highest benefits to other environmental resources. It addresses upland and in-water sources of contamination, including the Tank Farm Pier

and existing terminal facilities; it reduces the ferry system's impacts on the local transportation system and parking; it supports local land use plans; it avoids displacing a local business; and it opens up the largest area of the waterfront to public use, access, and potential developments consistent with the City of Mukilteo's plans.

The costs of the Preferred Alternative are reasonable compared to the other alternatives, and would not require the selection of any other alternative.

### **5.5.5 Section 4(f) Evaluation**

The full Section 4(f) evaluation in *Appendix I* provides a more complete description of the factors FTA has considered and the analysis performed to support its finding that:

- FTA has found no feasible and prudent avoidance alternatives to using protected Section 4(f) resources.
- In developing the Preferred Alternative, WSDOT and FTA have conducted all possible planning to minimize harm to each property that would be used.
- Considering the Preferred Alternative's mitigation and enhancement measures for Section 4(f) uses, as well as its impacts and benefits, the Preferred Alternative would have the least overall harm to Section 4(f) resources and the environment.